

**ORIGINAL**

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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

09 CV ( )

**VERIFIED COMPLAINT**

MADLIENA SHIPPING LTD.,

Plaintiff,

- against -

SINCERE NAVIGATION CORP.

Defendant.

Plaintiff, MADLIENA SHIPPING LTD. ("Madliena") by and through its attorneys, Watson, Farley & Williams (New York) LLP, as and for its Verified Complaint against Defendant SINCERE NAVIGATION CORP. ("Sincere"), alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Federal Rule of Civil Procedure ("F.R.Civ.P.") Rule 9(h) and 28 U.S.C. § 1333.

2. At all times relevant to this action, Plaintiff Madliena was, and still is, a foreign corporation duly organized and operating under the laws of Malta, with an office located at 168 St. Christopher Street, Valletta, Malta.

3. At all times relevant to this action, Defendant Sincere is and was a company organized under the laws of Taiwan, R.O.C., with an office at Yu Tai Enterprise Building, 14<sup>th</sup> Floor, 368 Fu Hsing South Road, Section 1, Taipei, Taiwan, R.O.C..

**THE CONTRACT**

4. By a Memorandum of Agreement dated May 6, 2009 (the "MOA"), Sincere agreed to sell, and Madliena agreed to buy, M/V TIEN SHAN (the "Vessel"), an ocean-going bulk carrier. Attached hereto as Exhibit 1 is a true and correct copy of the MOA.

5. The MOA provides that Sincere was to deliver the Vessel to Madliena "after her next laden voyage from E.C. Australia to South Korea". Clause 5(b) of the MOA states:

[t]he Vessel shall be delivered, 'as is where is' and taken over safely at a safe and accessible berth or anchorage at a safe port within Singapore/Japan range, including South Korea and Malaysia or within Skaw/Port Said range (excluding North Africa) including UK port in the Sellers option, charter free, cargo free. The vessel shall be delivered after her next laden voyage from E.C. Australia to South Korea which shall be performed after current discharge in Map Ta Hut, Thailand.

Exhibit 1.

6. When the MOA was concluded, the parties expected the Vessel to complete the E.C. Australia to South Korea voyage in early June, 2009.

7. Sincere provided a notice of delivery to Madliena, stating that the Vessel would be delivered in accordance with the MOA on June 10 or 11.

8. Subsequently however, Sincere indicated that it might not be able to deliver the Vessel to Madliena in early June, as planned, because Sincere had not yet completed certain internal requirements related to the sale of the Vessel.

9. Because Madliena had made active commercial preparations for receiving the Vessel, including stationing a representative aboard and positioning crew, the parties

entered into an addendum to the MOA, dated June 3, 2009 (the “Second Addendum”).<sup>1</sup>

10. The Second Addendum provides:

- A. Pursuant to Clause 5 of the MOA, [Sincere] shall deliver the Vessel after her current laden voyage from Abbot Point, Australia to Dangjin, South Korea.
- B. [Madliena] have the option of taking the Vessel on time charter trip (TCT) for one Pacific round voyage via Australia and taking delivery thereafter or of taking delivery of the Vessel in South Korea no earlier than 26<sup>th</sup> June 2009.

Exhibit 1, Addendum 2.

11. In addition to explicitly providing Madliena with the option to time charter the Vessel, Addendum 2 contains all of the terms usually found in a charter party, including laydays, safe berth, anchorage, and port warranties, cargo restrictions, a trading range, a bunkering clause, and a daily time charter hire rate. *Id.*

12. Addendum 2 also contains a voyage description of “one TCT [time charter trip] Australia to Singapore / Japan range including South Korea and Malaysia”. *Id.*

13. Addendum 2 also expressly incorporated the terms of another charter party to fill in those terms not explicitly stated in Addendum 2: “other terms as per c/p [charter party] ‘Tien Shan/STX Panocean charter party dated 30 April 2009 with logical alterations”. *Id.*

14. In preparation for the anticipated time charter of the Vessel, Madliena arranged to provide 500 MT of bunkers<sup>2</sup> to the Vessel.

15. Under Addendum 2, the Vessel was to be delivered to Madliena for the time charter trip between June 10, 2009 and June 15, 2009.

16. Addendum 2 thus contains clearly severable and distinct maritime

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<sup>1</sup> The First Addendum, also dated June 3, 2009, relates to the documents to be provided at closing.

<sup>2</sup> Bunkers are heavy fuel oil (sometimes called “HFO”) and are used to power a ship’s main engines.

obligations from the obligations under the MOA.

17. Addendum 2 was intended to allow Madliena to time charter the vessel from Sincere while Sincere completed its internal sale procedure. Addendum 2 also provides that the Vessel was to be delivered under the MOA on June 26, 2009 in South Korea, thus providing a date when the Vessel would be ready for Madliena to take ownership.

18. However, instead of complying with its obligation under Addendum 2, Sincere fixed the Vessel on an unrelated voyage with a third party, choosing to play the spot market to Madliena's detriment.

19. The spot market voyage entered into by Sincere also resulted in the delivery of the Vessel being pushed back by approximately 1 month, to late July, 2009.

20. Sincere delivered the Vessel under the MOA, on or about July 28, 2009.

21. Madliena acted in reliance on Sincere's representations under Addendum 2 regarding the delivery of the vessel, and positioned crew and other resources on this basis. These resources were left idle, but paid for by Madliena, while Sincere took the spot market voyage.

22. In addition to the above preparations, Madliena positioned a representative aboard the Vessel in expectation of the time charter or delivery under the MOA, and who could not disembark prior to Sincere's commencement of the spot market voyage.

23. In addition to costing Madliena the opportunity to earn money on the spot charter market, Sincere's decision to breach Addendum 2 cost Madliena a lucrative 81 day (estimated) time charter.

24. The dispute between the parties regarding the interplay of Addendum 2

and the MOA is subject to English law and London arbitration.

25. Attorneys' fees and costs are routinely awarded in English law arbitrations.

26. In the U.K. arbitration, Plaintiff is entitled to recover:

Net Lost Hire June 12 through July 27	\$1,949,950.00
Crew standby costs	\$4,800.00
Goodwood supervision team (stuck aboard vessel during charter)	\$16,700.00
Replacement crew standby	\$109,166.67
Interest for 1 Year at 8%	\$166,449.32
<u>Estimated Fees and Costs</u>	<u>\$200,000.00</u>
<b>Total Claim</b>	<b>\$2,447,065.90</b>

27. Plaintiff has prepared draft Claim Submissions and will initiate the underlying arbitration promptly, but has not done so yet because Plaintiff is attempting to first obtain security.

**AS AND FOR A FIRST CAUSE OF ACTION**

**BREACH OF CHARTER**

28. Addendum 2 created an obligation on Defendant Sincere to time charter the Vessel to Madliena or to promptly deliver the Vessel under the MOA.

29. Sincere's failure to comply with Addendum 2 constitutes a breach of charter and deprived Madliena of the use of the Vessel.

30. Due to Sincere's breach, Madliena has been damaged in an amount of no less than **\$2,447,065.90**.

**AS AND FOR A SECOND CAUSE OF ACTION**

**BREACH OF DELIVERY WARRANTY**

31. Plaintiff repeats and re-alleges paragraphs 1 through 30 as if set forth herein at length.

32. The Vessel completed the E.C. Australia / South Korea voyage on June 9, 2009 and was thus within the Singapore/Japan range, which is the place of delivery under clause 5(b) of the MOA. Once the Vessel was physically ready for delivery, Sincere was obliged to deliver the Vessel under MOA clause 5(a).

33. In breach of clause 5(a), the Seller failed to give a notice of readiness and to deliver the Vessel to Madliena on June 12, 2009.

34. Further, Sincere had an obligation under clause 5(b) either as a matter of express obligation or as a matter of implied obligation to deliver the Vessel “promptly” after completion of the E.C Australia / South Korea voyage.

35. In breach of clause 5(b), the Seller failed to deliver the Vessel promptly following completion of the E.C. Australia / South Korea voyage, instead performing the voyage described above.

36. Due to Sincere’s breach, Madliena has been damaged in an amount of no less than **\$2,447,065.90**.

**PRAYER FOR RELIEF**

37. Defendant cannot be found in the Southern District of New York (“S.D.N.Y.”) within the meaning of F.R.Civ.P. Rule B of the Supplemental Rules for Admiralty and Maritime Claims.

38. Accordingly, Plaintiff Madliena respectfully seeks the issuance of a

maritime writ of attachment in the amount of **\$2,447,065.90**.

39. Upon information and belief, the proceeds of the sale of the Vessel and other assets of the Defendant will be held in the hands of garnishees, including but not limited to ABN Amro, American Express Bank, Atlantic Bank of New York, Bank of America, Bank of China, State Bank of India, Bank of Tokyo-Mitsubishi, BNP Paribas, Barclay's Bank, Citibank, Deutsche Bank, HSBC USA Bank NA, JP Morgan Chase Bank, Korea Exchange Bank, Nordea Bank Norge ASA, Societe General, Standard Chartered Bank, The Bank of New York, UBS, Wachovia Bank, and/or other subsequently identified entities on whom a copy of the Process of Maritime Attachment and Garnishment may be served (the "Garnishees") which are believed to be sent by, owing to, or for the benefit of Defendant.

40. Plaintiff seeks an Order from this Court directing the Clerk of the Court to issue Process of Maritime Attachment and Garnishment pursuant to F.R.Civ.P. Rule B attaching any and all assets of Defendant up to the amount of **\$2,447,065.90** held by the Garnishees for the purpose of obtaining personal jurisdiction over Defendant and to secure an eventual Award as described above.

WHEREFORE, Plaintiff Madliena prays:

a. That process in due form of law issue against Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

b. That, since Defendant cannot be found within the S.D.N.Y. pursuant to F.R.Civ.P. Rule B, this Court issue an Order directing the Clerk of the Court to issue Process of Maritime Attachment and Garnishment pursuant to F.R.Civ.P. Rule B

attaching all property, tangible or intangible, in whatever form or any other funds held by any of the Garnishees, which are sent by or due and owing to Defendant in the amount of **\$2,447,065.90** to secure Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and, pursuant to F.R.Civ.P. Rule B and E, Answer the matters alleged in the Verified Complaint;

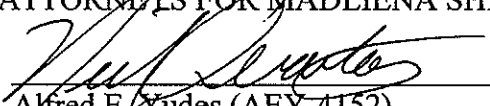
c. That this Court retain jurisdiction over this matter through the entry of any judgment or further award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof; and

d. That Plaintiff Madliena have such other, further and different relief as the Court may deem just and proper in law and equity.

Dated: New York, New York  
July 28, 2009

WATSON, FARLEY & WILLIAMS (NEW YORK) LLP  
ATTORNEYS FOR MADLIENA SHIPPING LTD.

By:

  
Alfred E. Yudes (AEY-4152)  
Neil A. Quartaro (NAQ-9640)  
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New York, NY 10036  
Tel: (212) 922-2200  
Fax: (212) 922-1512




STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK    )

Neil A. Quartaro, being duly sworn, deposes and says:

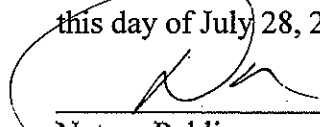
I am an attorney with the law firm of Watson, Farley & Williams (New York) LLP, counsel for the Plaintiff MADLIENA SHIPPING LTD., herein and I have read the foregoing Verified Complaint and know the contents thereof and that same are true to my own knowledge, except to matters herein stated to alleged on information and belief, and as to those matters I believe them to be true.

The source of my information is documents, records and other information submitted to me by, or on behalf of, the Plaintiff.

This verification is made by me because Plaintiff is a foreign corporation.

  
\_\_\_\_\_  
Neil A. Quartaro

Sworn to before me  
this day of July 28, 2009

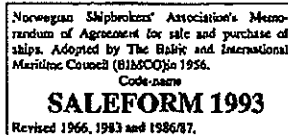
  
\_\_\_\_\_  
Notary Public

**Daniel Rodgers**  
**No. 02R06122869**  
**Qualified in New York County**  
**Certificate Filed in New York County**  
**Commission Expires February 22, 2009**

**EXHIBIT 1**

**MEMORANDUM OF AGREEMENT**

Dated: 6th May 2009



**Sincere Navigation Corporation, 14th Floor Yu Tai Enterprise Building, 368 Fu Hsing South Road  
Section 1 Taipei, Taiwan, R.O.C.**

hereinafter called the Sellers, have agreed to sell, and **Madliena Shipping Limited of  
168 St Christopher Street, Valletta VLT1467, Malta, as nominated by Grover Star Shipping Corp  
Inc, 80 Broad Street, Monrovia, Liberia**

hereinafter called the Buyers, have agreed to buy **MV 'Tien Shan'**

Name: **'Tien Shan'**

Classification Society/Class: **NK/CR**

Built: **1994**

By: **Tsunelshi Shipbuilding Co., Ltd., Japan**

Flag: **Republic Of China** Place of Registration: **Kaohsiung**

Call Sign: **BKFV**

Grt/Nrt: **GT / NT : 66,623 / 42,726**

Register Number: **012566**

hereinafter called the Vessel, on the following terms and conditions:

**Definitions**

"Banking days" are days on which banks are open both in the country of the currency stipulated for the Purchase Price in Clause 1 and in the place of closing stipulated in Clause 8.

"In writing" or "written" means a letter handed over from the Sellers to the Buyers or vice versa, a registered letter, telex, telefax or other modern form of written communication.

"Classification Society" or "Class" means the Society referred to in line 4.

1. **Purchase Price USD 19,000,000 (Nineteen Million United States Dollars)**

**2. Deposit**

As security for the correct fulfilment of this Agreement the Buyers shall pay a deposit of 20% 40-% (twenty per cent)(ten per cent) of the Purchase Price within 3 (three) banking days (Sunday/holidays both in USA and HK excluded) after signing of this agreement by both parties on fax copies. from the date of this

Agreement. This deposit shall be placed with **BNP Paribas Hong Kong (SWIFT : BNPAHKHH)** for account of **Sincere Navigation Corporation (Seller) and Madliena Shipping Limited (Buyer nominated by Grover Star Shipping Corp.,)** account no. **00001-204900-008-29 USD Message - attention : Gary Lee - Asia Shipping Division** deposit money for m.v. **Tien Shan,** Covering bank : **BNP Paribas New York (SWIFT BNPAUS3N)**

and held by them in a joint account for the Sellers and the Buyers, to be released in accordance with joint written instructions of the Sellers and the Buyers. Interest earned, if any, less cost charged by the bank to be credited to the

Buyers account. Any fee charged for holding the said deposit shall be borne equally by the Sellers and the Buyers.

### 3. Payment 25

The said Purchase Price shall be paid in full free of bank charges to : 26  
**BNP Paribas Hong Kong (SWIFT : BNPAHKHH) for account of Sincere Navigation Corporation,**  
**account no. 00001 000669 008 95 USD Message - attention : Gary Lee -**  
**Asia Shipping Division" purchase money for m.v. Tien Shan, Covering**  
**bank : BNP Paribas New York (SWIFT BNPAUS3N).**

on delivery of the Vessel, but not later than 3 banking days (*Sunday/holiday both in USA and HK* 27  
*excluded*) after the Vessel is in every respect  
 physically ready for delivery in accordance with the terms and conditions of this Agreement and 28  
 Notice of Readiness has been given in accordance with Clause 5. 29

### 4. Inspections 30

a)\* The Buyers have inspected and accepted the Vessel's *NK/CR* classification records. The 31  
 Buyers  
 have also inspected the Vessel at/in *Abbott Point, Australia* on *12th March 2009* 32  
 and have accepted the Vessel following this inspection and the sale is outright and definite, 33  
 subject only to the terms and conditions of this Agreement. 34

b)\* ~~The Buyers shall have the right to inspect the Vessel's classification records and declare~~ 35  
~~whether same are accepted or not within~~ 36

~~The Sellers shall provide for inspection of the Vessel at/in~~ 37

~~The Buyers shall undertake the inspection without undue delay to the Vessel. Should the~~ 38  
~~Buyers cause undue delay they shall compensate the Sellers for the losses thereby incurred.~~ 39  
~~The Buyers shall inspect the Vessel without opening up and without cost to the Sellers.~~ 40  
~~During the inspection, the Vessel's deck and engine log books shall be made available for~~ 41  
~~examination by the Buyers. If the Vessel is accepted after such inspection, the sale shall~~ 42  
~~become outright and definite, subject only to the terms and conditions of this Agreement,~~ 43  
~~provided the Sellers receive written notice of acceptance from the Buyers within 72 hours~~ 44  
~~after completion of such inspection.~~ 45  
~~Should notice of acceptance of the Vessel's classification records and of the Vessel not be~~ 46  
~~received by the Sellers as aforesaid, the deposit together with interest earned shall be~~ 47  
~~released immediately to the Buyers, whereafter this Agreement shall be null and void.~~ 48

\* 4 a) and 4b) are alternatives; delete whichever is not applicable. In the absence of deletions, 49  
 alternative 4a) to apply. 50

### 5. Notices, time and place of delivery 51

a) The Sellers shall keep the Buyers well informed of the Vessel's Itinerary and shall 52  
 provide the Buyers with 30 , 15 , and 10 days *approximate notice of delivery and 3/2/1 days* 53  
*definite notice of delivery. Sellers to advise Buyers the delivery range and likely delivery*  
*port together with their first notice of delivery. the estimated time of arrival at the*  
~~intended place of drydocking/underwater inspection/delivery.~~ 54  
 When the Vessel is at the place 55  
 of delivery and in every respect physically ready for delivery in accordance with this 56  
 Agreement, the Sellers shall give the Buyers a written Notice of Readiness for delivery.

b) The Vessel shall be delivered, 'as is where is' and taken over safely afloat at a safe and 57  
 accessible berth or  
 anchorage *at a safe port at/in within Singapore/Japan range, including South Korea and* 58  
*Malaysia or within Skaw/Port Said range (excluding North Africa) including UK*  
*port in the Sellers' option, charter free, cargo free. The vessel shall be delivered after her* 59  
*next laden voyage from E.C. Australia to South Korea which shall be performed after*  
*current discharge in Map Ta Phut, Thailand.*

Expected time of delivery: *June/August 2009* 60

Date of cancelling (see Clauses 5 c), 6 b) (iii) and 14): *31st August 2009 in Buyers' option.* 61

c) If the Sellers anticipate that, notwithstanding the exercise of due diligence by them, the Vessel will not be ready for delivery by the cancelling date they may notify the Buyers in writing stating the date when they anticipate that the Vessel will be ready for delivery and propose a new cancelling date. Upon receipt of such notification the Buyers shall have the option of either cancelling this Agreement in accordance with Clause 14 within 7 3 running days of receipt of the notice or of accepting the new date as the new cancelling date. If the Buyers have not declared their option within 7 3 running days of receipt of the Sellers' notification or if the Buyers accept the new date, the date proposed in the Sellers' notification shall be deemed to be the new cancelling date and shall be substituted for the cancelling date stipulated in line 61.

If this Agreement is maintained with the new cancelling date all other terms and conditions hereof including those contained in Clauses 5 a) and 5 c) shall remain unaltered and in full force and effect. Cancellation or failure to cancel shall be entirely without prejudice to any claim for damages the Buyers may have under Clause 14 for the Vessel not being ready by the original cancelling date.

d) Should the Vessel become an actual, constructive or compromised total loss before delivery the deposit together with interest earned shall be released immediately to the Buyers whereafter this Agreement shall be null and void.

6. Drydocking/Divers Inspection (See Rider Clause 17)

a) The Sellers shall place the Vessel in drydock at the port of delivery for inspection by the Classification Society of the Vessel's underwater parts below the deepest load line, the extent of the inspection being in accordance with the Classification Society's rules. If the rudder, propeller, bottom or other underwater parts below the deepest load line are found broken, damaged or defective so as to affect the Vessel's class, such defects shall be made good at the Sellers' expense to the satisfaction of the Classification Society without condition/recommendation.

b) (i) The Vessel is to be delivered without drydocking. However, the Buyers shall have the right at their expense to arrange for an underwater inspection by a diver approved by the Classification Society prior to the delivery of the Vessel. The Sellers shall at their cost make the Vessel available for such inspection. The extent of the inspection and the conditions under which it is performed shall be to the satisfaction of the Classification Society. If the conditions at the port of delivery are unsuitable for such inspection, the Sellers shall make the Vessel available at a suitable alternative place near to the delivery port.

(ii) If the rudder, propeller, bottom or other underwater parts below the deepest load line are found broken, damaged or defective so as to affect the Vessel's class, then unless repairs can be carried out afloat to the satisfaction of the Classification Society, the Sellers shall arrange for the Vessel to be drydocked at their expense for inspection by the Classification Society of the Vessel's underwater parts below the deepest load line, the extent of the inspection being in accordance with the Classification Society's rules. If the rudder, propeller, bottom or other underwater parts below the deepest load line are found broken, damaged or defective so as to affect the Vessel's class, such defects shall be made good by the Sellers at their expense to the satisfaction of the Classification Society without condition/recommendation. In such event the Sellers are to pay also for the cost of the underwater inspection and the Classification Society's attendance.

(iii) If the Vessel is to be drydocked pursuant to Clause 6 b) (i) and no suitable drydocking facilities are available at the port of delivery, the Sellers shall take the Vessel to a port where suitable drydocking facilities are available, whether within or outside the delivery range as per Clause 5 b). Once drydocking has taken place the Sellers shall deliver the Vessel at a port within the delivery range as per Clause 5 b) which shall, for the purpose of this Clause, become the new port of delivery. In such event the cancelling date provided for in Clause 5 b) shall be extended by the additional time required for the drydocking and extra steaming, but limited to a maximum of 14 running days.

e) If the Vessel is drydocked pursuant to Clause 6 a) or 6 b) above

(i) the Classification Society may require survey of the tailshaft system, the extent of

the survey being to the satisfaction of the Classification surveyor. If such survey is not required by the Classification Society, the Buyers shall have the right to require the tailshaft to be drawn and surveyed by the Classification Society, the extent of the survey being in accordance with the Classification Society's rules for tailshaft survey and consistent with the current stage of the Vessel's survey cycle. The Buyers shall declare whether they require the tailshaft to be drawn and surveyed not later than by the completion of the inspection by the Classification Society. The drawing and refitting of the tailshaft shall be arranged by the Sellers. Should any parts of the tailshaft system be condemned or found defective so as to affect the Vessel's class, these parts shall be renewed or made good at the Sellers' expense to the satisfaction of the Classification Society without condition/recommendation.

(ii) the expenses relating to the survey of the tailshaft system shall be borne by the Buyers unless the Classification Society requires such survey to be carried out, in which case the Sellers shall pay these expenses. The Sellers shall also pay the expenses if the Buyers require the survey and parts of the system are condemned or found defective or broken so as to affect the Vessel's class.

(iii) the expenses in connection with putting the Vessel in and taking her out of drydock, including the drydock dues and the Classification Society's fees shall be paid by the Sellers if the Classification Society issues any condition/recommendation as a result of the survey or if it requires survey of the tailshaft system. In all other cases the Buyers shall pay the aforesaid expenses, dues and fees.

(iv) the Buyers' representative shall have the right to be present in the drydock, but without interfering with the work or decisions of the Classification surveyor.

(v) the Buyers shall have the right to have the underwater parts of the Vessel cleaned and painted at their risk and expense without interfering with the Sellers' or the Classification surveyor's work, if any, and without affecting the Vessel's timely delivery. If, however, the Buyers' work in drydock is still in progress when the Sellers have completed the work which the Sellers are required to do, the additional docking time needed to complete the Buyers' work shall be for the Buyers' risk and expense. In the event that the Buyers' work requires such additional time, the Sellers may upon completion of the Sellers' work tender Notice of Readiness for delivery whilst the Vessel is still in drydock and the Buyers shall be obliged to take delivery in accordance with Clause 3, whether the Vessel is in drydock or not and irrespective of Clause 6 b).

\* Notes, if any, in the surveyor's report which are accepted by the Classification Society without condition/recommendation are not to be taken into account.

\*\* 6-a) and 6-b) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 6-a) to apply.

#### 7. Spares/bunkers, etc.

The Sellers shall deliver the Vessel to the Buyers with everything belonging to her on board and on shore, and on order including Navigation aids which is ship's property. Also included are spares, stores and provisions as onboard without any extra, but excluding hired items and Captain/Crew personal effects and slop chest. All spare parts and spare equipment including spare tail end shaft(s) and/or spare propeller(s)/propeller blade(s), if any, belonging to the Vessel at the time of inspection used or unused, whether on board or not shall become the Buyers' property, but spares on order are to be excluded. Forwarding charges, if any, shall be for the Buyers' account. The Sellers are not required to replace spare parts including spare tail end shaft(s) and spare propeller(s)/propeller blade(s) which are taken out of spare and used as replacement prior to delivery, but the replaced items shall be the property of the Buyers. The radio installation and navigational equipment shall be included in the sale without extra payment if they are the property of the Sellers. Unused stores and provisions shall be included in the sale and be taken over by the Buyers without extra payment. *Vessel has no spare propeller nor spare tail end shaft.*

The Sellers have the right to take ashore crockery, plates, cutlery, linen and other articles bearing the Sellers' flag or name, provided they replace same with similar unmarked items. Library, forms, etc., exclusively for use in the Sellers' vessel(s), shall be excluded without compensation. Captain's, Officers' and Crew's belongings including the slop chest are to be excluded from the sale, as well as the following additional items (including items on hire): *Drew Amerold/Unitor gas bottles*

and Videotel Training Tapes/Disks.

At the time of delivery, the Buyers shall take over and pay for the costs of the remaining bunkers and Marine Diesel Oil as onboard at Platt's published mean price for IFO 380 CST and Marine Diesel Oil current at the date / port of delivery. If the delivery port is not listed in the Platt Oilgram price list, then the Platt's published prices at the nearest bunkering port to apply. Buyers to take over and pay for the costs of unused lubricating oils in tanks and in unbroached drums as onboard at Sellers net contract price plus barge cost (if any) as evidenced by paid vouchers or invoices where available. However, where supportive vouchers is not available, then Buyers to settle the lubricating oil costs at net contract prices as quoted in the area where Sellers last supplied the cylinder oil and system oil.

unused lubricating oils in storage tanks and coated drums and pay the current net market price (excluding barging expenses) at the port and date of delivery of the Vessel. Payment under this Clause shall be made at the same time and place and in the same currency as the Purchase Price.

#### 8. Documentation

List of delivery document to be mutually agreed after MOA signed and deposit lodged and to be incorporated into an addendum.

The place of closing: BNP Paribas office in Hong Kong

In exchange for payment of the Purchase Price the Sellers shall furnish the Buyers with delivery documents, namely:

- a) Legal Bill of Sale in a form recordable in ~~(the country in which the Buyers are to register the Vessel), warranting that the Vessel is free from all encumbrances, mortgages and maritime liens or any other debts or claims whatsoever, duly notari-ally attested and legalized by the consul of such country or other competent authority.~~ 179
- b) Current Certificate of Ownership issued by the competent authorities of the flag state of the Vessel. 183
- c) Confirmation of Class issued within 72 hours prior to delivery. 185
- d) Current Certificate issued by the competent authorities stating that the Vessel is free from registered encumbrances. 186
- e) Certificate of Deletion of the Vessel from the Vessel's registry or other official evidence of deletion appropriate to the Vessel's registry at the time of delivery, or, in the event that the registry does not as a matter of practice issue such documentation immediately, a written undertaking by the Sellers to effect deletion from the Vessel's registry forthwith and furnish a Certificate or other official evidence of deletion to the Buyers promptly and latest within 4 (four) weeks after the Purchase Price has been paid and the Vessel has been delivered. 188
- f) Any such additional documents as may reasonably be required by the competent authorities for the purpose of registering the Vessel, provided the Buyers notify the Sellers of any such documents as soon as possible after the date of this Agreement. 194

At the time of delivery the Buyers and Sellers shall sign and deliver to each other a Protocol of Delivery and Acceptance confirming the date and time of delivery of the Vessel from the Sellers to the Buyers.

At the time of delivery the Sellers shall hand to the Buyers the classification certificate(s) as well as all plans etc., which are on board the Vessel. Other certificates which are on board the Vessel shall also be handed over to the Buyers unless the Sellers are required to retain same, in which case the Buyers to have the right to take copies. Other technical documentation which may be in the Sellers' possession shall be promptly forwarded to the Buyers at their expense, if they so request. The Sellers may keep the Vessel's log books but the Buyers to have the right to take copies of same.

9. Encumbrances 207

The Sellers warrant that the Vessel, at the time of delivery, is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever. The Sellers hereby undertake to indemnify the Buyers against all consequences of claims made against the Vessel which have been incurred prior to the time of delivery. 208  
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10. Taxes, etc. 212

Any taxes, fees and expenses in connection with the purchase and registration under the Buyers' flag shall be for the Buyers' account, whereas similar charges in connection with the closing of the Sellers' register shall be for the Sellers' account. 213  
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11. Condition on delivery 216

The Vessel with everything belonging to her shall be at the Sellers' risk and expense until she is delivered to the Buyers, but subject to the terms and conditions of this Agreement she shall be delivered and taken over 'as is where is' as she was at the time of inspection, fair wear and tear excepted. 217  
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However, the Vessel shall be delivered with her *present* class maintained, *free of without condition/ recommendation*\*, 220

*and free of average damage to affect her classification affecting the Vessel's class, and with all her classification, certificates and* 221

*national/International trading certificates to be clean, without extensions, and valid for at least 3 months from date of delivery, with CSM cycle clean and up-to-date. Vessel to be delivered with cargo holds swept clean. as well as all other certificates the Vessel had at the time of inspection, valid and* 222

*unextended without condition/recommendation\* by Class or the relevant authorities at the time of delivery.* 223  
224

*"Inspection" in this Clause 11, shall mean the Buyers' inspection according to Clause 4 a) or 4 b), if applicable, or the Buyers' inspection prior to the signing of this Agreement. If the Vessel is taken over without inspection, the date of this Agreement shall be the relevant date.* 225  
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\* Notes, if any, in the surveyor's report which are accepted by the Classification Society without condition/recommendation are not to be taken into account. 228  
229

12. Name/markings 230

Upon delivery the Buyers undertake to change the name of the Vessel and alter funnel markings. 231

13. Buyers' default 232

Should the deposit not be paid in accordance with Clause 2, the Sellers have the right to cancel this Agreement, and they shall be entitled to claim compensation for their losses and for all expenses incurred together with interest. 233  
234  
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Should the Purchase Price not be paid in accordance with Clause 3, the Sellers have the right to cancel the Agreement, in which case the deposit together with interest earned shall be released to the Sellers. If the deposit does not cover their loss, the Sellers shall be entitled to claim further compensation for their losses and for all expenses incurred together with interest. 236  
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14. Sellers' default 240

Should the Sellers fail to give Notice of Readiness in accordance with Clause 5 a) or fail to be ready to validly complete a legal transfer by the date stipulated in line 61 *or at such date that may have been extended pursuant to this agreement* the Buyers shall have 241  
242

the option of cancelling this Agreement provided always that the Sellers shall be granted a maximum of 3 banking days after Notice of Readiness has been given to make arrangements for the documentation set out in Clause 8. If after Notice of Readiness has been given but before the Buyers have taken delivery, the Vessel ceases to be physically ready for delivery and is not made physically ready again in every respect by the date stipulated in line 61 *or at such date that may* 243  
244  
245  
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*have been extended pursuant to this agreement* and new Notice of Readiness given, the Buyers shall retain their option to cancel. In the event that the Buyers elect to cancel this Agreement the deposit together with interest earned shall be released to them immediately. Should the Sellers fail to give Notice of Readiness by the date stipulated in line 61 *or at such date that may have been extended pursuant to this agreement* or fail to be ready to validly complete a legal transfer as aforesaid they shall make due compensation to the Buyers for their loss and for all expenses together with interest if their failure is due to proven negligence and whether or not the Buyers cancel this Agreement.

#### 15. Buyers' representatives

After this Agreement has been signed by both parties and the deposit has been lodged, the Buyers have the right to place two representatives on board the Vessel *during the last voyage prior to delivery* at their sole risk and expense. ~~upon arrival at~~ *-on or about-* These representatives are on board for the purpose of familiarisation and in the capacity of observers only, and they shall not interfere in any respect with the operation of the Vessel. The Buyers' representatives shall sign the Sellers' letter of indemnity prior to their embarkation.

#### 16. Arbitration

a)\* This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act ~~1950 and 1978~~ 1996 or any statutory modification or re-enactment thereof for the time being in force, one arbitrator being appointed by each party. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall apply. If two arbitrators properly appointed shall not agree they shall appoint an umpire whose decision shall be final. *The arbitrators shall be members of the London Maritime Arbitrators Association.*

b)\* ~~This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Law of the State of New York and should any dispute arise out of this Agreement, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for purpose of enforcing any award, this Agreement may be made a rule of the Court. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. New York.~~

c)\* Any dispute arising out of this Agreement shall be referred to arbitration at ~~subject to the procedures applicable there.~~ *-shall govern this Agreement.* The laws of ~~-shall govern this Agreement.~~

\* 16 a), 16 b) and 16 c) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 16 a) to apply.

*Additional clauses 17-19, as attached below, form an integral part of this Memorandum of Agreement.*

#### Rider Clauses:-

17. Vessel to be delivered without dry-docking, however, Buyers have the option at their own cost to employ a class recognized diver to inspect Vessel's bottom and underwater part at least two days prior delivery. If any damage is found and the attending class surveyor considers such damage will affect class or will impose a condition of class which is affecting her clean condition of class, then the Owner to arrange according to paragraph a) or b) below whichever applicable.

a) In the event that class imposes a condition that would require the Vessel to be drydocked before her next scheduled drydocking, then the Sellers shall arrange at their expense for the Vessel to be drydocked in accordance with Clause 6 of NSF 1993 and they shall repair the damage to class satisfaction to obtain a clean certificate of class without conditions or recommendations prior to

delivery to the Buyers.

*The decision of class as to whether underwater damage, if any, imposes a condition of class shall be final and binding of the parties. In the event that the Vessel is required to be drydocked as per (a) above the Sellers have the right to take the Vessel from the intended delivery port and proceed directly in ballast to a port in the Sellers' option where such drydocking and repairs to take place which place to be within Vessel's delivery range as per Clause 4, it is agreed that the cancelling date shall be extended per day pro-rata for the extra time taken to deliver the Vessel caused by ballasting/drydocking/repairs as required to be carried out to class satisfaction as above.*

*Whilst the Vessel is in drydock the Buyers shall have the right to attend the Vessel and to have the right to clean, paint and carry out their reasonable works whilst she is in drydock at the Buyers' risk and expense provided same does not interfere with the Seller's work and the Buyers work to be subjected to the Sellers' attending superintendent's approval which however not be unreasonably withheld.*

*In the event that the Buyers' works are not completed prior to the time the Sellers have completed their work, the Sellers have the right to tender notice of readiness whilst Vessel is still in drydock provided they are in all respects ready to deliver the Vessel in accordance with the terms of the M.O. A. should the Buyers' work still not be completed and the Vessel be unable to leave drydock because of this work within three (3) banking days after the Sellers have tendered N.O.R. then the Buyers shall take delivery of the Vessel in drydock and pay for the Vessel even though she remains in drydock.*

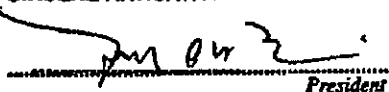
*The cost for docking and undocking shall be for the Sellers' account but any extra time and expense spent in drydock after N.O.R. has been tendered by the Sellers shall be for the Buyers' account.*

*b) If the diver's inspection reveals damage to the underwater parts which would affect the class, but the class surveyor approved the repair to be deferred and the Vessel to trade until her next drydocking, the Buyers and Sellers shall mutually agree a monetary compensation in lieu of actual repair, which shall pay to the Buyers by deduct from the purchase money at the time of closing. In the event that agreement cannot be reached, then the sum to be based upon the average of two quotations from two respectable shipyards close to the delivery port but within the delivery range, one obtained by each party, to quantify the costs of repair estimated for compensation.*

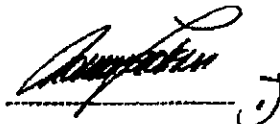
**18. The negotiation to be kept strictly private and confidential.**

**19. This sale is subject to vessel's flag state administration, the Ministry Of Transportation and Communications R.O.C. to approve the sale within ten working days after agreement of main terms.**

**SINCERE NAVIGATION CORPORATION**

  
President

**The Sellers  
Sincere Navigation Corporation**



**The Buyers  
Madliena Shipping Limited**

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**BNP PARIBAS**

DATE : 03.06.2009  
OUR REF : IRG67136

TO: SINCERE NAVIGATION CORPORATION (S)  
AND MADLIENA SHIPPING LIMITED (B)  
ASIA SHIPPING DIVISION  
BNP PARIBAS HK BR

## CREDIT ADVICE

WE HAVE TODAY CREDITED YOUR ACCOUNT NO. : 00001-20490000829

WITH : USD 3 800 000.00

AMOUNT OF PAYMENT : USD 3 800 000.00

@ (EXCHANGE RATE) :

LESS

CABLE CHARGES :

COMMISSION :

POSTAGE :

CORR. CHARGES / TAX :

NET AMOUNT CREDITED : USD 3 800 000.00

BY ORDER OF : GROVER STAR SHIPPING CORPORATION  
PO BOX 48 SIR WALTER RALEIGH HOUSE  
48-50 THE ESPLANADE ST HELIER JERS  
EY JE4 8NK

REMITTING BANK : ROYAL BANK OF SCOTLAND INTERNATIONAL  
ST. HELIER JERSEY, C.I.

MESSAGE : ATTN: GARY LEE,  
ASIA SHIPPING DIVISION  
DEPOSIT MONEY FOR  
MV TIEN SHAN

N.B. IT IS UNDERSTOOD THAT IN CASE OF ERROR OR IRREGULARITIES  
BEING FOUND, WE RESERVE THE RIGHT TO HAVE YOUR ACCOUNT  
DEBITED FOR THE WHOLE AMOUNT PLUS CHARGES, INTEREST AND  
OTHER EXPENSES, IF ANY.

YOURS FAITHFULLY  
BNP PARIBAS  
(NO SIGNATURE REQUIRED)



**ADDENDUM No.1**

Dated 3<sup>rd</sup> June 2009

to the

**MEMORANDUM OF AGREEMENT**

dated 6<sup>th</sup> May 2009

(hereinafter called "the MOA")

between

**SINCERE NAVIGATION CORPORATION** of the Republic  
of China

(hereinafter called "the Sellers")

and

**MADLIENA SHIPPING LIMITED** of Malta

(hereinafter called "the Buyers")

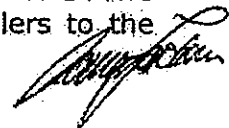
in respect of the motor vessel "**TIEN SHAN**"

(hereinafter called "the Vessel")

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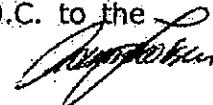
(A) It is hereby agreed between the Sellers and the Buyers that the documents to be produced by the Sellers at closing pursuant to Clause 8 of the MOA shall be as follows:-

- A. Bill Of Sale (in Malta 1A format) in two (2) originals, evidencing the transfer of ownership of all shares in the Vessel from the Sellers to the Buyers and stating that the Vessel is free from all mortgages, taxes, encumbrances, maritime liens or any other debts whatsoever, with Sellers' representative's signature notarially attested as to genuineness and capacity to act on behalf of the Sellers, and legalized by U.K.Consulate or Apostille in Hong Kong.
- B. Copy of resolutions of the board of directors of the Sellers approving the Sale of the Vessel from the Sellers to the



Buyers and authorising the execution of the Bill of Sale and related delivery documents, including the Protocol of Delivery and Acceptance, notarially attested and legalized by U.K.Consulate or Apostille in Hong Kong.

- C. Copy of Sellers' Trading Permit in Chinese Version. This permit to be translated in English by a recognized Translation Service Agency.
- D. Power of Attorney, empowering person/s entitled to execute and sign any and all documents and to effect delivery of the Vessel notarially attested and legalized by U.K.Consulate or Apostille in Hong Kong.
- E. Official approval letter issued by The Ministry Of Transportation And Communication, R.O.C., for the sale of the Vessel to the Buyers (In Chinese version). This letter to be translated in English by a recognized Translation Service Agency.
- F. Class maintenance certificate issued by NK and dated not earlier than three (3) working days prior to delivery of the Vessel. (Original to be presented to Buyers' representative onboard the Vessel upon delivery and a fax copy to be provided at the closing.)
- G. Free from Mortgage and Registered Claims Certificate issued by the Kaohsiung Harbor Bureau, dated not more than three (3) banking days before delivery of the Vessel.
- H. Commercial invoice in triplicate for the Vessel.
- I. Commercial invoice for costs of bunker and lubricating oil remaining onboard.
- J. Letters of Undertaking from Sellers to Buyers
  - (i) to delete vessel's registry and provide an original deletion certificate within 30 days after delivery of the vessel.
  - (ii) to apply to R.O.C Registry for, and to provide, closed CSR which will be sent to the Buyers (or to such address as the Buyers may direct), and transfer of the Vessel's current complete CSR file from R.O.C. to the Malta Maritime Authority



(iii) to deliver the Vessel physically to the Buyers immediately upon receiving payment of all monies due under the MOA.

(iv) that to the best of Sellers knowledge and belief, the Vessel is not blacklisted / boycotted by any nation and / or organization.

(v) to indemnify and hold the Buyers harmless against all claim or claims which may have incurred by the Vessel prior to the time of delivery of the Vessel to the Buyers.

K) Protocol of delivery and acceptance, in two originals

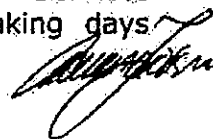
Drafts of all Sellers' delivery documents except for those date essential to be provided to Buyers at least seven (7) days before delivery of the Vessel.

(B) It is hereby agreed between the Sellers and the Buyers that the documents to be produced by the Buyers at closing pursuant to Clause 8 of the MOA shall be as follows:-

AA) Copy resolutions of the board of directors of the Buyers approving the purchase of the Vessel from the Sellers and authorising the execution all relevant delivery documents, including the protocol of delivery and acceptance, duly attested by notary public and apostilled.

BB) Power of attorney issued pursuant to A) above, empowering person/s entitled to execute and sign any and all documents including the protocol of delivery and acceptance, and to release payment for and to accept delivery of the Vessel, with Buyers' representative's signature duly attested by notary public as to genuineness and capacity to act on behalf of the Buyers and to legally bind the Buyers; duly attested by notary public and apostilled.

CC) Certificate of good standing and incumbency in respect of the Buyers, issued by the Malta Financial Services Authority, dated not more than five (5) banking days before delivery of the Vessel;

A handwritten signature in dark ink, appearing to be a stylized name, located at the bottom right of the page.

DD) Notarially attested and apostilled copies of the Certificate of Registration, and of the Memorandum and Articles of Incorporation of the Buyers

Drafts of Buyers' documents AA), BB) and DD), together with a proforma of CC), shall be provided for Sellers' confirmation at least ten (10) days before delivery of the Vessel.

(C) All other terms and conditions of the MOA shall remain unaltered and in full force and effect.

Dated this 3<sup>rd</sup> day of June 2009

For the Sellers:

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**SINCERE NAVIGATION CORPORATION**

Represented by

Director / Attorney-in-Fact

For the Buyers:



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**MADLIENA SHIPPING LIMITED**

Represented by *THOMAS JARDEN*



**ADDENDUM No. 2**

**Dated 3<sup>rd</sup> June 2009  
to Memorandum of Agreement dated the 6<sup>th</sup> May 2009 (the "MOA")  
made between  
Sincere Navigation Corporation (the "Sellers") and  
Madliena Shipping Limited (the "Buyers")  
Relating to the sale of "m/v Tien Shan" (the "Vessel")**

**This Addendum No.2 is made this 3<sup>rd</sup> day of June, 2009 by and between Sincere Navigation Corporation (the "Sellers") and Madliena Shipping Limited (the "Buyers").**

**Whereas**

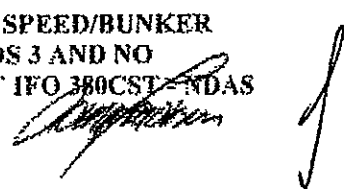
- A. Pursuant to Clause 5 of the MOA, the Sellers shall deliver the Vessel after her current laden voyage from Abbot Point, Australia to Dangjin, South Korea.**
- B. The Buyers have the option of taking the Vessel on time charter trip (TCT) for one Pacific round voyage via Australia and taking delivery thereafter or of taking delivery of the Vessel in South Korea no earlier than 26<sup>th</sup> June 2009.**

**NOW THIS ADDENDUM NO.2 WITNESSETH as follows:**

**It is agreed between the Sellers and the Buyers that:**

- 1) Sellers' intention is to tender NOR at noon local time on 26th June 2009 at one safe port South Korea.**
- 2) However the Buyers have the option to charter the Vessel for one Pacific round trip via Australia which to be declared by 11<sup>th</sup> June 2009 1800 hours London time. Charterers to pay for consumables at a lumpsum of US\$ 5,000.00, if option of the TCT is not declared.**

**-TIEN SHAN  
ROC FLAG BLT 94  
SDBC  
128,826 MT DWT ON 16.326 M SSW 98 TPC  
GRT/NRT : 66,623 / 42,726  
LOA 265 BM 41  
144,477 CBM GRAIN CAPA  
9 HO 9 HA NO2-9 14.85X18.7M, HA SZ NO1 13.2X13.6M SPEED/BUNKER  
CONSUMPTION BASIS UPTO AND INCLUDING BF 4/DS 3 AND NO  
ADVERSE CURRENT ABT 13.25L/14.25B ON ABT 39MT IFO 380CST -NDAS**



IN PORT IDLE 1IFO + 1.5MDO, WORKING 1IFO + 3.5MDO VSL BURNS MDO  
IN NARROW OR RESTRICTED WATERS, ENTERING OR LEAVING PORTS  
AND FOR GENERATOR START, STORMING AND ELECTRIC LOAD ON  
VERY LOW OR UNSTEADY CONDITION.  
ALL DETAILS ABT

-OWNERS TO CONFIRM THAT VSL IS RIGHTSHIP APPROVED

for

-Account : Madliena Shipping Limited of Valetta, Malta

-Delivery : on dropping outward last sea pilot (DOLSP) Dangjin any time day night  
Sunday holiday included (ATNDSHINC). If Buyers declare their option after vessel  
has completed discharge and sailed Dangjin, in which case delivery time and hire to  
count retroactive to vessel DOLSP Dangjin.

-Layday / cancelling day : 10 June 2009 0001 hours / 15 June 2009 2400 hours local  
time

-For one TCT Australia to Singapore / Japan range including South Korea and  
Malaysia.

- via safe berth(s), safe anchorage(s), safe port(s), always afloat, always within  
Institute Warranty Limits in carrying harmless and lawful merchandise coal or iron  
ore in bulk described/loaded/stowed/carried/discharged in accordance with latest  
IMO rules/regulations/recommendations.

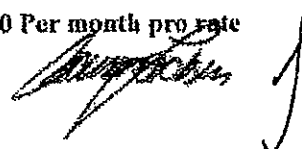
-redelivery on dropping anchor at one safe anchorage, within port limit of last  
discharging port Singapore/Japan range including South Korea and Malaysia  
ATNDSHINC

-hire USD 8,500 per day including overtime payable in advance within 3 banking  
days from delivery onto charterer for approximate duration of the voyage. balance  
(credit or debit) if any to be settled at time of delivery of the Vessel as per clause 3 of  
the MOA dated 6th May 2009.

-bunker onboard on delivery about 720 MT IFO, 160 MT low sulphur FO and  
about 75 MT MDO. Bunker on redelivery about same quantities as on delivery.  
Bunker costs to be settled at same prices both ends. USD415 PMT FOR both IFO  
and low sulphur FO and USD565 PMT FOR MDO.

-in lieu of cargo hold cleaning USD 5,500.- lumpsum

-communication /Victualling / entertainment costs USD 1,250 Per month pro rata



-other terms as per c/p 'Tien Shan/STX Panocean charter party dated 30 April 2009 with logical alterations

3) If the TCT option in clause 2) above is declared then the Vessel will be delivered from Sellers to Buyers on completion of this TCT voyage as per MOA terms. Notices clause 5 line 52 to 54 to read The Sellers shall only provide the Buyers with 3/2/1 definite notice of delivery. It is strictly understood that the vessel will be delivered on completion of the TCT, within Singapore/Japan range, including South Korea and Malaysia, at the discharge port or nearest safe accessible berth or anchorage at nearest safe port.

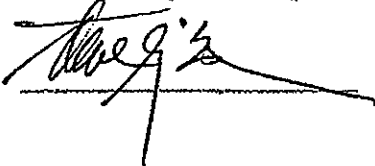
4) If the option of the TCT is not declared then Sellers shall tender 15 and 10 days approximate notice of delivery and 3 days definite notice.

5) All other terms, conditions of the MOA and documents thereto shall remain unchanged and in full force and effect. Where there is a conflict between Addendum No 2 and MOA, the terms of the MOA are to prevail.

All information supplied herein by Sellers is given in good faith.

IN WITNESS WHEREOF, the parties hereto have executed this ADDENDUM by their duly authorized representatives on the date first above written.

For and on behalf of the Sellers  
Sincere Navigation Corporation



For and on behalf of the Buyers  
Madliena Shipping Limited

